

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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TEODOLO RAMIREZ MENDEZ,

Plaintiff,

- against -

34-16 UNION STREET MARKET, INC. and
CHUL HO KIM,

Defendants.
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: **MEMORANDUM DECISION
AND ORDER**

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: 20-CV-5775 (AMD) (PK)

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ANN M. DONNELLY, United States District Judge:

On November 30, 2020, the plaintiff brought this action against the defendants alleging violations of the Fair Labor Standards Act, the New York Labor Law and the New York Minimum Wage Act. (ECF No. 1.) The Clerk of the Court issued a certificate of default against the defendants on July 9, 2021. (ECF No. 10.) On September 14, 2021, the plaintiff's counsel filed a letter informing the Court that the plaintiff did not wish to proceed with the case and had stopped responding to the plaintiff's counsel. (ECF No. 13.) The letter also noted that an attorney for the defendants had contacted the plaintiff's counsel about settlement. (*Id.* at 1.)

Magistrate Judge Peggy Kuo construed this letter as a motion for voluntary dismissal and directed the plaintiff to file affidavits specifically addressing whether dismissal was being sought pursuant to a settlement agreement that would require court approval under *Cheeks v. Freeport Pancake House, Inc.*, 796 F.3d 199 (2d Cir. 2015). Judge Kuo further ordered the defendants' counsel to enter an appearance and file affidavits attesting to whether there was a settlement agreement between the parties.

On October 19, 2021, Judge Kuo issued a report and recommendation, in which she recommends that the plaintiff's motion for voluntary dismissal be granted. Judge Kuo observes that there is no sign from either the plaintiff's counsel or the former counsel for the defendants that dismissal is being sought pursuant to a settlement agreement. No objections have been filed to the report and recommendation, and the time for doing so has passed.

A district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). To accept those portions of the report and recommendation to which no timely objection has been made, "a district court need only satisfy itself that there is no clear error on the face of the record." *Jarvis v. N. Am. Globex Fund L.P.*, 823 F. Supp. 2d 161, 163 (E.D.N.Y. 2011) (internal quotation marks and citation omitted).

I have carefully reviewed Judge Kuo's well-reasoned report and recommendation and find no error. Accordingly, I adopt the report and recommendation. The case is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a). The Clerk of the Court is respectfully directed to close this case.

SO ORDERED.

s/Ann M. Donnelly

ANN M. DONNELLY
United States District Judge

Dated: Brooklyn, New York
November 10, 2021